DAMAI MOTOR KREDIT SDN BHD & ANOR v. KEMENTERIAN KERJA RAYA MALAYSIA

COURT OF APPEAL, PUTRAJAYA
MOHAMED APANDI ALI JCA
ABDUL AZIZ RAHIM JCA
MOHAMAD ARIFF YUSOF JCA
[CIVIL APPEAL NO: J-01(IM)-328-07-2012]
8 OCTOBER 2012

LAND LAW: *Acquisition of land – Compensation – Appellants' land acquired by respondents – Objection to amount of compensation – Application for extension of time to file objection – Whether regular – Appellants sought to intervene in action between respondent and Land Administrator – Whether appellants proper parties to intervene – Whether appellants 'person interested' as defined by s. 2 of Land Acquisition Act 1960 – Whether there were special circumstances to merit extension of time – Delay in application for extension of time – Whether prejudiced appellants – Land Acquisition Act 1960, s. 38(4)*

CIVIL PROCEDURE: *Intervener – Legal interest – Leave to intervene – Application for – Appellants' land acquired by respondent – Appellants sought to intervene in action between respondent and Land Administrator – Whether appellants proper parties to intervene in action to challenge award of compensation – Whether appellants' interests affected by order or judgment made in court – Whether appellants 'person interested' defined by s. 2 of Land Acquisition Act 1960 – Whether respondent's conduct prejudiced appellants*

The first appellant was the registered owner of a piece of land ('the land') and the second appellant had entered into a joint venture agreement with the first appellant to develop the land. Sometime in May 2009, Kementerian Kerja Raya Malaysia ('the respondent') had requested the Pentadbir Tanah Johor Bahru to acquire the land under the provisions of the Land Acquisition Act 1960 ('the Act'). The hearing on the land acquisition was conducted by the Land Administrator and accordingly, a sum of RM6,951,150 and RM4,450,000 were awarded as compensation to the first and second appellants respectively. Subsequently, the appellants issued a demand to the Land Administrator for payment of the award when the compensation sum was not paid to the appellants by the Land Administrator or the respondent. Having received no response, the appellants commenced *mandamus* proceedings against the Land Administrator. Soon after the completion of the inquiry as to the acquisition of the land by the Land Administrator, the Pengarah Penilaian Negeri, Jabatan Penilaian dan Perkhidmatan Harta Johor had written a letter to Pengarah Cawangan Jalan Ibu Pejabat JKR informing the latter that there was substantial increase in the compensation sum awarded to the appellants by the Land Administrator in respect of the acquisition of the land compared to the recommended valuation by the

Valuation Department. The letter also advised JKR to file an objection with the Land Administrator against the compensation sum awarded if JKR was not agreeable with it and to do so within 42 days from the date of completion of the inquiry. However, at the end of the 42 days period, the respondent failed to file the objection to the award by the Land Administrator. The respondent filed an application to the High Court for extension of time to file the objection in Form N with the Land Administrator which was allowed by the court on 20 October 2010. The appellants objected to the order of extension of time stating that it was irregular and that they were to proceed with the proceedings (for *mandamus*) including to set aside the order of extension of time obtained by the respondent. The Land Administrator applied to the court and successfully obtained a stay order in respect of the appellants' *mandamus* proceeding until the respondent's objection on the award could be heard. Therefore, the appellant filed the summons in chambers seeking, *inter alia,* that the appellants be granted leave to intervene in the action between the respondent and the Pentadbir Tanah. The Judicial Commissioner, however, dismissed the appellants' application. Hence, this appeal. The issues that arose were, *inter alia* (i) whether the appellants were proper parties to intervene in the action filed by the respondent against the Land Administrator to challenge the award of compensation in respect of the acquisition of the land and; (ii) whether the order dated 20 October 2010 granting the respondent the extension of time to file the objection was regularly obtained.

Held (allowing appeal)
Per Abdul Aziz Rahim JCA delivering the judgment of the court:

(1) The appellants have a genuine and direct legal interest in the matter and that interest would definitely be affected by any order or judgment that might be made in the action particularly if the order or judgment resulted in the reduction of the amount of compensation awarded to the appellants, and which had been formalised by the issuance and acceptance of Form H, by the Land Administrator. The appellants were also 'person interested' as defined by s. 2 of the Act which 'includes every person claiming an interest in compensation to be made on account of the acquisition of land under this Act ...'. The appellants clearly fell within that definition. Therefore, there was no issue that the appellants should be given leave to intervene. (paras 17 & 18)

(2) The inquiry as to the compensation in this case had been concluded for almost over a year and the appellants had accepted the award made by the Land Administrator. The Land Administrator had taken possession of the land with the issuance of Form K. At the inquiry as to the amount of compensation to be awarded, the respondent was represented by its representative, the Director of JKR Negeri Johor, and he did not object to the award made by the Land Administrator. Clearly, the appellants

were interested parties and their interest would be affected by any order to be made by the court in allowing the extension of time for the respondent to file an objection to the award. Thus, justice would require the application for extension of time be served on the appellants. Further, there were no averments that were sufficiently convincing to show special circumstances that would merit extension of time as provided under s. 38(4) of the Act. (paras 22 & 23)

(3) It is trite that when the law or a court order requires a person to do an act and no time frame is stipulated for the doing of the act, such an act must be done within reasonable time or at convenient speed (s. 54 of the Interpretation Acts 1948 & 1967). In the present appeal, there was a delay of almost a year from the date the respondent was informed by Jabatan Penilaian dan Perkhidmatan Harta Negeri Johor regarding the award of compensation in which was in excess of the valuation. The letter from Jabatan Penilaian dan Perkhidmatan Harta Negeri Johor was dated 17 November 2009, a month after the conclusion of the inquiry and the issuance of Form H confirming the amount of award compensation. The respondent filed the application in the originating summons for extension of time only on 3 September 2010 and Form N was filed on 24 March 2011. The respondent could have filed Form N soon after it received the letter from Jabatan Penilaian dan Perkhidmatan Harta Negeri Johor to object to the amount of compensation awarded by the Land Administrator and thereby could have done away with the necessity to apply for extension of time to file Form N. This conduct of the respondent certainly had prejudiced the appellants. (para 29)

Bahasa Malaysia *Translation Of Headnotes*

Perayu pertama adalah pemilik berdaftar sebidang tanah ('tanah') dan perayu kedua telah memeterai satu perjanjian usaha sama dengan perayu pertama untuk membangunkan tanah itu. Pada bulan Mei 2009, Kementerian Kerja Raya Malaysia ('responden') telah meminta Pentadbir Tanah Johor Bahru untuk memperoleh tanah di bawah Akta Pengambilan Tanah 1960 ('Akta'). Perbicaraan berkenaan pengambilan tanah telah dijalankan oleh Pentadbir Tanah dan dengan itu, jumlah RM6,951,150 dan RM4,450,000 telah diawardkan sebagai pampasan masing-masing kepada perayu pertama dan perayu kedua. Berikutnya, perayu-perayu telah mengeluarkan satu tuntutan kepada Pentadbir Tanah untuk bayaran award apabila jumlah pampasan tidak dibayar kepada perayu-perayu oleh Pentadbir Tanah atau responden. Setelah tidak menerima jawapan, perayu-perayu memulakan prosiding *mandamus* terhadap Pentadbir Tanah. Sebaik selepas penyiapan inkuiri berkenaan pegambilan tanah oleh Pentadbir Tanah, Pengarah Penilaian Negeri, Jabatan Penilaian dan Perkhidmatan Harta Johor telah menulis surat kepada Pengarah Cawangan Jalan Ibu Pejabat JKR dan memaklumkan

A bahawa terdapat peningkatan besar dalam jumlah pampasan yang telah diberikan kepada perayu-perayu oleh Pentadbirn Tanah berkenaan pengambilan tanah berbanding dengan penilaian yang disyorkan oleh Jabatan Penilaian. Surat itu juga telah menasihati JKR untuk memfailkan bantahan dengan Pentadbir Tanah terhadap jumlah pampasan yang diawardkan jika
B JKR tidak bersetuju dengannya dan harus berbuat demikian dalam tempoh 42 hari dari tarikh selesainya inkuiri itu. Walau bagaimanapun, pada akhir tempoh 42 hari, responden gagal memfailkan bantahan terhadap award oleh Pentadbir Tanah. Responden memfailkan permohonan kepada Mahkamah Tinggi untuk lanjutan masa bagi pemfailan bantahan dalam Borang N dengan
C Pentadbir Tanah yang telah dibenarkan pada 20 Oktober 2010. Perayu-perayu membantah perintah lanjutan masa dan menyatakan bahawa ia adalah luar aturan dan mereka akan meneruskan prosiding *(mandamus)* serta mengenepikan perintah lanjutan masa yang telah diperoleh oleh responden. Pentadbir Tanah memohon kepada mahkamah dan telah berjaya memperoleh
D perintah penangguhan berkenaan prosiding *mandamus* perayu-perayu sehingga bantahan responden mengenai award dapat dibicarakan. Oleh itu, perayu memfailkan saman dalam kamar memohon, antara lain, bahawa perayu-perayu diberikan kebenaran untuk mencelah dalam guaman antara responden dan Pentadbir Tanah. Pesuruhjaya Kehakiman, walau bagaimanapun, menolak permohonan perayu-perayu. Oleh itu, rayuan ini.
E Isu-isu yang timbul, antara lain, adalah (i) sama ada perayu-perayu adalah pihak-pihak yang sesuai untuk mencelah dalam guaman yang telah difailkan oleh responden terhadap Pentadbir Tanah untuk mencabar award pampasan berkenaan pengambilan tanah itu; (ii) sama ada perintah bertarikh 20 Oktober 2010 yang telah membenarkan lanjutan masa kepada responden
F untuk memfailkan bantahan diperoleh secara teratur.

Diputuskan (membenarkan rayuan)
Oleh Abdul Aziz Rahim HMR menyampaikan penghakiman mahkamah:

(1) Perayu-perayu mempunyai kepentingan undang-undang yang tulen dan secara langsung dalam perkara ini dan kepentingan tersebut pasti akan
G terjejas oleh apa-apa perintah penghakiman yang dibuat dalam guaman terutamanya jika perintah atau penghakiman menyebabkan pengurangan dalam jumlah award pampasan yang telah diberikan kepada perayu-perayu, dan yang telah dirasmikan oleh pengeluaran dan penerimaan Borang H, oleh Pentadbir Tanah. Perayu-perayu juga adalah 'orang yang
H berkepentingan' seperti yang ditakrifkan oleh s. 2 yang 'termasuk setiap orang yang memohon mempunyai kepentingan dalam pampasan yang dibuat disebabkan pengambilan tanah di bawah Akta ini ...' Perayu-perayu dengan jelasnya terangkum dalam definisi itu. Oleh itu, tiada isu bahawa perayu-perayu harus diberikan kebenaran untuk mencelah.

I

(2) Inkuiri berkenaan pampasan dalam kes ini telah dimuktamadkan selama hampir lebih setahun dan perayu-perayu telah menerima award yang dibuat oleh Pentadbir Tanah. Pentadbir Tanah telah mengambil milikan ke atas tanah dengan pengeluaran Borang K. Dalam inkuiri berkenaan jumlah pampasan yang diawardkan, responden telah diwakili oleh wakilnya, Pengarah JKR Negeri Johor, dan beliau tidak membantah award yang diberikan oleh Pentadbir Tanah. Dengan jelasnya, perayu-perayu adalah pihak yang berkepentingan dan kepentingan mereka akan terjejas dengan apa-apa perintah yang dibuat oleh mahkamah dalam membenarkan lanjutan masa oleh responden untuk memfailkan bantahan terhadap award. Oleh itu, keadilan akan memerlukan permohonan untuk pelanjutan masa itu diserahkan kepada perayu-perayu. Selanjutnya, hujahan-hujahan yang diberikan tidak memadai untuk menunjukkan bahawa terdapat hal-hal keadaan khas yang akan mewajarkan lanjutan masa seperti yang diperuntukkan bawah s. 38(4) Akta.

(3) Adalah undang-undang mantap bahawa apabila undang-undang atau perintah mahkamah memerlukan seseorang untuk bertindak dan tiada jangka masa ditetapkan untuk tindakan itu, tindakan itu harus dilakukan dalam tempoh masa yang munasabah atau dengan secepat mungkin (s. 54 Akta Tafsiran 1948 & 1967). Dalam rayuan ini, terdapat kelewatan hampir setahun dari tarikh responden dimaklumkan oleh Jabatan Penilaian dan Perkhidmatan Harta Negeri Johor berkenaan award pampasan yang melebihi penilaian yang telah dicapai. Surat dari Jabatan Penilaian dan Perkhidmatan Harta Negeri Johor bertarikh 17 November 2009, sebulan selepas inkuiri telah diputuskan dan pengeluaran Borang H yang mengesahkan jumlah award pampasan. Responden memfailkan permohonan saman dalam kamar untuk pelanjutan masa hanya pada 3 September 2010 dan Borang N telah difailkan pada 24 Mac 2011. Responden boleh memfailkan Borang N sebaik sahaja ia menerima surat dari Jabatan Penilaian dan Perkhidmatan Harta Negeri Johor untuk membantah jumlah pampasan yang telah diawardkan dan dengan itu tidak perlu dengan keperluan untuk memohon melanjutkan masa untuk pemfailan Borang N. Tindakan responden dengan jelasnya telah memprejudiskan perayu-perayu.

Case(s) referred to:

Lau Cher Hian v. Collector of Land Revenue, Muar [1969] 1 LNS 77 FC ***(refd)***

Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v. Ong Gaik Kee [1983] 1 LNS 14 FC ***(refd)***

Penang Development Corporation v. Collector of Land Revenue Penang & Anor [1976] 1 MLJ 89 ***(refd)***

Singapore Para Rubber Estate Ltd v. Pentadbir Tanah Daerah Rembau, Negeri Sembilan [2007] 5 CLJ 71 CA ***(refd)***

Singapore Para Rubber Estate Ltd v. Pentadbir Tanah Daerah, Daerah Rembau, Negeri Sembilan [2009] 1 CLJ 13 FC ***(refd)***
Tohtonku Sdn Bhd v. Superace (M) Sdn Bhd [1992] 2 CLJ 1153; [1992] 1 CLJ (Rep) 344 SC ***(refd)***

Legislation referred to:
Interpretation Acts 1948 and 1967, s. 54
Land Acquisition Act 1960, ss. 2, 14, 37(1), (3), 38(1), (3)(a), (4)

For the appellants - LM Looi (Fadhil Ihsan with him); M/s Dennis Nik & Wong
For the respondent - Nur Irmawatie Daud; SFC

[Appeal from High Court, Kuala Lumpur; Land Reference No: 15-18-2011]

Reported by Suhainah Wahiduddin

JUDGMENT

Abdul Aziz Rahim JCA:

[1] The first and second appellants are the proposed interveners in a Land Reference matter No. 15-18-2011 in the High Court at Johor Bahru between the respondent (Kementerian Kerja Raya Malaysia) and the Pentadbir Tanah Johor Bahru. The first and second appellants had, on 3 October 2011, filed a summons in chambers (lampiran 18 before the High Court) in that land reference matter to intervene. But their application was dismissed by the learned Judicial Commissioner on 28 June 2012. The first and second appellants have now filed this appeal against the whole of that decision.

The Background

[2] There was a piece of land known as HS(D) 227499 Lot 3782 (PTD64399) Mukim Tebrau, Johor Bahru ("the land"). The first appellant was the registered owner of that land. The second appellant had entered into a joint venture agreement with the first appellant to develop the land.

[3] Sometime in May 2009, the respondent had requested the Pentadbir Tanah Johor Bahru to acquire the land under the provisions of the Land Acquisition Act 1960.

[4] The purpose of the acquisition was for a public project ie, the construction of two elevated intersections at Jalan Tampoi, in the District of Johor Bahru, Johor.

[5] The hearing on the land acquisition was conducted by the Land Administrator on 7 September 2009 and 10 September 2009. Present at the hearing was the respondent's representative, one Tuan Haji Mahadi bin Latiff. He was the Director of Jabatan Kerja Raya Negeri Johor. He informed the Land Administrator that the acquiring agency ie, the respondent has agreed to and has no objection to the compensation awarded. Accordingly, a sum of RM6,951,150 and RM4,450,000 were awarded as compensation to

the first and second appellants respectively. Thereafter the Land Administrator issued Form H to formalise the award and this was acknowledged by the appellants to signify their acceptance of the award.

[6] Subsequently, on 30 December 2009, the Land Administrator issued Form K to formalise the acquisition and to enter and take possession of the land. However, since the issuance of Form H and the acknowledgement of it by the appellants until the issuance of Form K, the compensation sum ("the award") was still not paid to the appellants by the Land Administrator or the respondent. The appellants then issued a demand (on 15 October 2010) to the Land Administrator for payment of the award. Having received no response or payment from the Land Administrator or the respondent, the appellants commenced a *mandamus* proceedings against the Land Administrator in Originating Summons No: 24M-14-2011 at Johor Bahru High Court.

[7] Prior to all these, and soon after the completion of the inquiry as to the acquisition of the land by the Land Administrator on 10 September 2009 and the issuance of Form H, the Pengarah Penilaian Negeri, Jabatan Penilaian dan Perkhidmatan Harta Johor had on 17 September 2009, written a letter (at pp. 812-813 of appeal record Jld. 2(2) (Bahagian C)) to Pengarah Cawangan Jalan, Ibu Pejabat JKR Malaysia, Kuala Lumpur informing the latter that there was substantial increase in the compensation sum awarded to the appellants by the Land Administrator in respect of the acquisition of the land compared to the recommended valuation by the valuation department. The letter also advised JKR to file an objection with the Land Administrator Johor Bahru against the compensation sum awarded if JKR is not agreeable with it and to do so within 42 days from the date of completion of the inquiry.

[8] However at the end of the 42 days period, the respondent failed to file the objection to the award by the Land Administrator. Form N, which is the statutory form required to be filed for any objection, was filed only on 24 March 2011 (pp. 571-572 appeal record Jld 2(2) (Bahagian C)) requesting the Land Administrator to refer the objection to court. The delay was almost two years after the respondent or its agent (the Ibu Pejabat JKR Malaysia Kuala Lumpur) was informed and advised by the Pengarah Jabatan Penilaian Negeri, Jabatan Penilaian dan Perkhidmatan Harta Johor about the increase in the compensation sum awarded to the appellants.

[9] On being advised by the Land Administrator, the respondent filed an application to the High Court at Johor Bahru for extension of time to file the objection in Form N with the Land Administrator. The application was by Originating Summons No: 24M-151-2010 dated 3 September 2010 and supported by an affidavit of one Zainuddin Zakaria, the Setiausaha Bahagian Pembangunan dan Penswastaan Kementerian Kerja Raya, Malaysia.

[10] The Land Administrator was aware of the respondent's application to the High Court for extension of time and did not oppose the application. Apparently however, the appellants did not know about it and were never served with the application. In any event, on 20 October 2010 the court granted the respondent's application for extension of time to file Form N, the objection. The appellants came to know about the extension of time only after they had received a copy of the respondent's letter dated 19 November 2010 addressed to the Land Administrator informing the latter that the respondent had filed the objection against the award given in respect of the acquisition and that the court had granted an extension of time and that the respondent would file Form N as soon as the respondent had obtained the sealed copy of the court order on the extension of time. The full text of the respondent's letter dated 19 November 2010 is reproduced below:

Ruj. Kami: (46) KKR.BPP.700-8/2/19Jld.3

Tarikh: 19 November 2010

Pentadbir Tanah Johor Bahru
Pejabat Pentadbir Tanah
Johor Bahru
Karung Berkunci 738
80990 JOHOR BAHRU

Tuan,

Pengambilan Balik Tanah Bagi HSD 227499 PTD 64399 Lot 3782 Mukim Tebrau Bagi Projek Membina Dua Persimpangan Bertingkat Di Jalan Tampoi Bagi Persimpangan Di Jalan Tebrau – Kampung Ubi, Mukim Bandar Johor Bahru Dan Tebrau, Daerah Johor Bahru

Dengan hormatnya merujuk perkara di atas dan surat tuan, bil. ( ) PTJB(PBT)02/08/01/13/13/2008J.36 bertarikh 15 Oktober 2010 berkaitan.

2. Untuk makluman tuan, Pejabat Penasihat Undang-Undang, Kementerian Kerja Raya telah memfailkan bantahan terhadap award untuk pengambilan balik tanah lot berkenaan pada 20 Oktober 2010 di Mahkamah Tinggi Johor Bahru. Permohonan lanjutan masa tersebut telahpun diluluskan dan pada masa ini sedang menunggu Deraf Perintah yang diluluskan daripada Mahkamah Tinggi Johor Bahru. Borang N akan dikemukakan kepada pihak tuan setelah Perintah Mahkamah tersebut diperolehi. Sehubungan dengan itu, segala bayaran pampasan akan ditangguhkan dahulu sehingga kes ini diselesaikan.

3. Dikemukakan untuk makluman dan tindakan pihak tuan selanjutnya.

Sekian, terima kasih.

"BERKHIDMAT UNTUK NEGARA"

Saya yang menurut perintah,

sgd

(Abdul Halim bin Muhamad Salleh)
Bahagian Pembangunan & Penswastaan
b.p. Ketua Setiausaha
Kementerian Kerja Raya
MALAYSIA.

[11] The appellants, through their solicitors, wrote to the respondent on 30 November 2010 expressing their surprise on the granting of the extension period to file the objection as they were not served with the relevant papers on the objection as well as with the cause papers regarding the application for extension of time. In the same letter (at pp. 567-568 of appeal record Jld. 2(2) (Bahagian C)) the appellants demanded that the respondent serve on them a copy of all the relevant papers on the objection and application for extension of time within seven (7) days from the date of their solicitors' letter. In their solicitors' letter, the appellants also objected to the order of extension of time stating that it was irregular and that their solicitors were instructed to proceed with the proceedings (for *mandamus*) including to set aside the order of extension of time obtained by the respondent. The appellants also indicated to the respondent that the suspension of payment of compensation until the respondent's case (on the objection) had been disposed of, was irregular and contrary to the provisions of the Land Acquisition Act 1960.

[12] Notwithstanding the objection by the appellants, the respondent proceeded, on 24 March 2011, to file the land reference to the court *vide* Form N at the Land Administrator's office under the provision of the Act to object to the award made by the Land Administrator to the appellants.

[13] In the meantime, in view of the order of extension of time obtained by the respondent, the Land Administrator applied to the court and successfully obtained a stay order in respect of the appellants' *mandamus* proceedings until the respondent's objection on the award could be heard by the court.

[14] Thereafter the appellants filed the summons in chambers dated 3 October 2011 (encl. 8 before the High Court) seeking *inter alia* the following orders:

(a) the appellants be granted leave to intervene in the action by the respondent and be made as 'respondent' in the action;

(b) the appellants be allowed to proceed and continue with the application to set aside the court order dated 20 October 2010 granting the respondent the extension of time to file the objection;

(c) the court order dated 20 October 2010 be set aside; and

(d) a declaration that Form N dated 24 March 2011 filed by the respondent is null and void.

[15] But on 28 June 2012 the learned Judicial Commissioner dismissed the appellants' application in encl. 8 with cost. Hence this appeal before us.

[16] There are three issues before us that require our determination. The first issue concerns whether the appellants are proper parties to intervene in the action filed by the respondent against the Land Administrator to challenge the award of compensation in respect of the acquisition of the land. The second issue is whether the order dated 20 October 2010 granting the respondent the extension of time to file the objection was regularly obtained and secondary to that is whether the extension of time should be given at all. The third issue is whether, if the answer to the second issue is in the affirmative, the Form N filed by the respondent with the Land Administrator should be struck off and declared null and void.

[17] On the first issue, the test to be applied is whether the appellants have a legal interest in the matter and whether the appellants' legal interest would be directly affected by any order or judgment which might be made in the action. From the narration of facts above it leaves us without an *iota* of doubt that the appellants do have a genuine and direct legal interest in the matter and that interest would definitely be affected by any order or judgment that might be made in the action particularly if the order or judgment resulted in the reduction of the amount of compensation awarded to the appellants, and which had been formalised by the issuance and acceptance of Form H, by the Land Administrator. This 'direct legal interest' test had been formulated and approved by the Supreme Court in *Tohtonku Sdn Bhd v. Superace (M) Sdn Bhd* [1992] 2 CLJ 1153; [1992] 1 CLJ (Rep) 344; [1992] 2 MLJ 63.

[18] The appellants are also 'person interested' as defined by s. 2 of the Act. The meaning assigned to the expression 'person interested' by s. 2 of the Act 'includes every person claiming an interest in compensation to be made on account of the acquisition of land under this Act, but does not include a tenant at will.' Clearly therefore the appellants fall within that definition or meaning of 'person interested'. As mentioned earlier, the first appellant was the registered proprietor of the land involved in the acquisition and the second appellant was the developer to develop the land under a joint venture agreement with the first appellant. Moreover the inquiry as to the amount of compensation payable for the acquisition had been completed by the relevant Land Administrator and the award of compensation had been made by the Land Administrator and accepted by the appellants. In the circumstances, the Senior Federal Counsel who appeared for the respondent in this appeal had rightly conceded that the appellants have a legal interest in the matter in the action. Therefore, there is no issue that the appellants should be given leave to intervene.

[19] On the second issue, it is the appellants' contention that the order for extension of time was irregular. The first ground advanced by the appellants for this contention is that under s. 38(1) of the Act read together with s. 38(3)(a), an objection by a person who was present or represented before the Land Administrator at the time when the Land Administrator made his award must be made within six weeks (42 days) from the date of the Land Administrator's award under s. 14 of the Act. And, s. 38(4) of the Act provides the period of six weeks prescribed by s. 38(3)(a) shall not be capable of enlargement by any court except in such special circumstances as the court may think fit. The second ground is that the application for extension of time was never served on the appellants by the respondent. The third ground is that the application was vague, improper and irregular because it did not set forth a specific period of time. Thus, allowing the respondent to object to the award *ad infinitum*. There was also a delay of some eleven months after the expiry of the objection period before the respondent made the application. The appellants also argued that the objection was made after the *mandamus* proceedings had commenced and that the respondent was estopped from objecting because the respondent was represented before the Land Administrator and participated in the inquiry at the time the Land Administrator made the award; and the respondent's representative did not object to the award made at the inquiry before the Land Administrator.

[20] In response to this argument, the learned Senior Federal Counsel representing the respondent in this appeal submitted that the contention by the appellants that the application for extension of time ought to have been served on them is not supported by statute or judicial authorities. It was argued that the only proper respondent to the application in the land reference case was the Land Administrator. The learned Senior Federal Counsel argued that by virtue of s. 37(1) read together with s. 37(3) of the Act, the respondent is an interested person because the respondent had not accepted the Land Administrator's award and therefore can make the objection to the award. It was further argued, in relation to the requirement for service of the application for extension of time, that the proper respondent in such application is the Land Administrator because the objection is in respect of the Land Administrator's award and that it is the Land Administrator that would be affected in the event an application for extension of time is granted. It was also argued that it cannot be expected that the appellants as the interested person to be made the respondent in the application for extension of time to object to the Land Administrator award because it is not unusual in some inquiries held by the Land Administrator to determine compensation, to have numerous interested persons. Learned Senior Federal Counsel cited several authorities exhibited in the respondent's bundle of authorities in this appeal, and submitted that from these authorities it is clear that only the Land Administrator is a proper respondent in such application. Therefore, it was submitted that the contention by the appellants

A that they should be served with the cause papers on the application for extension of time is not supported by the authorities. Finally, the learned Senior Federal Counsel submitted that the restriction in s. 38(4) of the Act that the period of six weeks to file an objection shall not be capable of enlargement is not absolute. The court, the Senior Federal Counsel submitted
B still has the discretion to enlarge the time to file an objection if there are special circumstances as the court may think fit; however, the burden is on the applicant applying for extension of time to show such special circumstances. (see *Lau Cher Hian v. Collector of Land Revenue, Muar* [1969] 1 LNS 77; [1971] 1 MLJ 96; *Penang Development Corporation v. Collector of*
C *Land Revenue Penang & Anor* [1976] 1 MLJ 89; *Singapore Para Rubber Estate Ltd v. Pentadbir Tanah Daerah Rembau, Negeri Sembilan* [2007] 5 CLJ 71; [2007] 5 MLJ 601.)

[21] With regard to the argument that the order on the extension of time is defective because it does not stipulate the period within which the
D objection to be filed, learned Senior Federal Counsel argued that it is not fatal and cannot in itself nullify the order. It is a mere omission.

[22] We are not persuaded by the argument put forth by the learned Senior Federal Counsel. Though we agree that there is no provision in the Act or in any case law which lay down the rule that an application for extension of
E time must be served on an interested person other than the Land Administrator, in the circumstances of the case, we think that justice would require the application to be served on the appellants. There is no dispute of fact that the inquiry as to the compensation in this case had been concluded for almost over a year and the appellants had accepted the award made by
F the Land Administrator. In fact the Land Administrator had taken possession of the land with the issuance of Form K. Furthermore, it is in evidence and this is not being challenged that at the inquiry as to the amount of compensation to be awarded, the respondent was represented by its representative by Tuan Haji Mahadi bin Latiff who is the Director of JKR
G Negeri Johor, and he did not object to the award made by the Land Administrator. Clearly therefore, the appellants are interested parties and their interest would be affected by any order to be made by the court in allowing the extension of time for the respondent to file an objection to the award.

H **[23]** Whilst the learned Senior Federal Counsel may be right in his submissions that the period of six weeks to file any objection may be extended or enlarged by the court under special circumstances as provided by s. 38(4) of the Act, we must emphasise that the burden is on the respondent to show special circumstances. Learned Senior Federal Counsel
I rightly submit to this position in law. Perusing the affidavit affirmed by one Zainuddin Zakaria, Setiausaha Bahagian Pembangunan dan Penswastaan, Kementerian Kerja Raya on 30 August 2010 in support of the respondent's

application for extension of time, we do not find any averments that are sufficiently convincing to show special circumstances that would merit extension of time.

[24] First of all, there is no explanation as to why there is a long delay in making the application when in fact the respondent had been informed by the Director of Valuation Department Johor Bahru as early as September 2009 about the quantum of award by the Land Collector that was far in excess of the valuation by the Valuation Department. Secondly, the respondent was represented at the inquiry by the Land Administrator and the respondent representative did not object to the award. If at all there is a ground that may merit consideration is a contention that there is an overlapping acquisition which may have a bearing on the amount of compensation payable. If this is true, then there are two possibilities. First, the matter could have and should have been brought to the attention of the Land Administrator during the inquiry. Secondly, the appellants should be given the opportunity to explain and to challenge this contention or to show otherwise. It was not explained in the affidavit in support by respondent why this issue was not brought to the attention of the Land Administrator.

[25] In this regard, we make reference to the Federal Court case of *Singapore Para Rubber Estate Ltd v. Pentadbir Tanah Daerah, Daerah Rembau, Negeri Sembilan* [2009] 1 CLJ 13, where the court said:

> [50] In order for the appellant to succeed under s. 38(4) it had to establish that there existed special circumstances to warrant the court to exercise that discretion. The onus therefore was on the appellant.
>
> [51] The discretion to be exercised by the court was not absolute and unqualified and had to be exercised sparingly.

[26] Likewise, in this appeal the respondent must show special circumstances and the court must exercise its discretion to enlarge the time for filing of objection sparingly.

[27] With regards to the submissions by the learned Senior Federal Counsel that the absence of a time frame in the order given by the court for the respondent to file the objection is not in itself a ground to nullify the order, we are of the view that, that may be so. However, it is trite that when the law or a court order requires a person to do an act and no time frame is stipulated for the doing of the act, such an act must be done within reasonable time or at convenient speed. The learned counsel for the appellants cited to us s. 54 of the Interpretations Act 1948 and 1967 which reads:

> Where no time is prescribed or allowed within which anything shall be done, that thing shall be done with all convenient speed and as often as the prescribed occasion arises.

[28] The question is, what is a convenient speed? The Federal Court in *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v. Ong Gaik Kee* [1983] 1 LNS 14; [1983] 2 MLJ 35, had said that "what amounts to convenient speed vary from case to case and it appears that a convenient speed is period which in a normal course of event would be considered as reasonable. Anything that does not come within that range and which no reasonable authority would regard it as reasonable is not a convenient speed." The Federal Court in that case was dealing with an application to strike out land acquisition on the ground that, that was a delay of seven years after the declaration of acquisition before an inquiry as to compensation was held by the Collector of Land Revenue resulting in an adequate compensation in that case as to whether the period seven years delay comes within the expression of convenient speed. The Federal Court express the following view.

> What then is the "convenient speed"? In our view it must be "as soon as possible" or "within a reasonable time", and not "as late as possible". Obviously what amounts to "convenient speed" must vary from case to case and in our judgment seven years delay is certainly not a "convenient speed" as it is so far outside the normal period of time that no reasonable authority could ever regard it as reasonable. That being the case the court is entitled to strike down the impugned acquisition proceedings as illegal.

[29] Though in the present appeal the delay is not seven years, nevertheless there is still a delay of almost a year from the date the respondent was informed by Jabatan Penilaian dan Perkhidmatan Harta Negeri Johor regarding the award of compensation in excess of the valuation by the Jabatan Penilaian dan Perkhidmatan Harta Negeri Johor. The letter from Jabatan Penilaian dan Perkhidmatan Harta Negeri Johor was dated 17 November 2009 which is about a month after the conclusion of the inquiry and the issuance of Form H confirming the amount of award compensation. The respondent filed the application in the originating summons for extension of time only on 3 September 2010 and Form N was only filed on 24 March 2011. The facts of the case shows that the respondent could have filed Form N soon after it received the letter from Jabatan Penilaian dan Perkhidmatan Harta Negeri Johor to object to the amount of compensation awarded by the Land Administrator and thereby could have done away with the necessity to apply for extension time to file Form N. This conduct of the respondent in our view certainly has prejudiced the appellants.

[30] We are fully aware that the appellants had been paid 75% of the sum awarded as compensation for the acquisition and that any delay in paying the balance sum would not be in the respondent's favour because it will attract late payment charges at the rate of 8% per annum on the 25% that was withheld by the respondent pending the disposal of their objection. However,

we do not think that the argument by the learned Senior Federal Counsel that any delay on the part of the respondent in expeditiously taking action would only be to its detriment is a sufficient ground to dismiss the appeal.

[31] For the above reasons we make the following orders:

(a) By consent, prayer (a) of the appellants' application in summons in chambers dated 3 October 2011 before the Johor Bahru High Court is allowed.

(b) Prayer (b), (c) and (d), upon hearing submissions by parties, ought to be allowed.

[32] In the result, we allow the appeal with cost of RM10,000 here and below to the appellants and deposit to be refunded to the appellants.

[33] Finally, as a postscript we wish to put on record that the learned Senior Federal Counsel has informed the court that the objection on the Land Administrator's award *via* the land reference has since been heard by the Johor Bahru High Court on 28 August 2012 and now is been fixed for submissions on 27 September 2012.